

ASSOCIATION OF CONCERNED TAXPAYERS

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ACTION - THE
TAXPAYERS' WATCHDOG

J. BRUCE HENDERSON
CHAIRMAN
AND PRESIDENT

ACT

**THE
DIRECT DEMOCRACY
INSTITUTE**

FOUNDED IN 1975

Delivered by Fax

October 28, 2002

Dan Barrett
Barrett Sports Group
1209 Morningside Drive, Suite 101
Manhattan Beach, CA 90266

Re: Disclosure And Audit Of All Financial Information
Directly Or
Indirectly Required To Support Any Renegotiation
Notice Delivered
By The San Diego Chargers

Dear Dan,

After reading Prof. Rosentraub's report to Councilwoman Frye which was presented to the Task Force on October 24, 2002, and after considering your comments that same evening, I have concluded that the NFL and its constituent teams have yet to make public the financial information necessary for a definitive calculation of the Triggering Event (under Section 31 of the Agreement with the Chargers).

Prof. Rosentraub stated that he was using financial data from the players' union. Naturally, that financial data is inherently less suspect than data that would be received from the Chargers. But, regardless of the issue of reliability, none of the data made public to date constitutes the actual data necessary to make a definitive calculation. After all, the data can't be "final" since we're only ten months into the 2002 calendar year.

As we are all aware, to date no Renegotiation Notice has been served by the Chargers on the City. In fact, the earliest date it can be served under the terms of the Agreement is December 1, 2002. Yet, since that date is one month shy of the end of the calendar year, it is obvious that that final data for the full calendar year would not be available. Would pro forma financial data suffice? That would be up to the City, but I can't imagine any public policy that would be served by

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permitting the Chargers to utilize pro forma data in a matter of this consequence.

Consequently, it would seem to me after conducting further review of Section 31 that the assumption that a Renegotiation Notice would not be served on the City until the end of January of 2003 reflects the most likely scenario. Even by the end of January, however, it is unlikely that final, audited financial data for calendar year 2002 from all necessary sources would be available. Can you shed any light on this logistical question?

Putting aside the logistical issue of when final data for 2002 would be available, in order to properly prepare for the eventuality that a Renegotiation Notice will be served, it is obviously important in the meantime to identify the precise nature of the financial information mandated by Section 31. An identification of the nature of this data is required by the City and by the Task Force in order for these two bodies to prepare to undertake independent calculations to determine whether or not a Triggering Event has in fact occurred.

The question, then, is just what financial data is mandated by Section 3 1?

In attempting to answer this question, I have once again carefully reviewed Section 31 and have identified four separate sources from which financial data must be obtained, each of these sources being equally critical to an accurate calculation of the Triggering Event formula set out in Section 3 1. These four sources are as follows:

1. Financial information must be obtained from the Chargers;
2. Financial information must be obtained from the NFL;
3. Financial information must be obtained from each of the NFL teams; and
4. Financial information must be obtained from any of the designees of the NFL and the NFL teams.

In reviewing these four categories, two issues seem to immediately arise. First, I am not aware of which entities, if any, might be "designees" constituting the fourth category. To what entities does this category refer? Is there any particular financial information that relates to designees but not to the NFL or NFL teams? Can you provide a list of existing designees or potential, if any exist?

A second issue would appear to follow from both your comments on October 24 and from those of Prof. Rosentraub that same evening, namely, that none of this financial information is publicly available for any past calendar year in detail sufficiently complete to permit unambiguous calculations to determine if a "triggering event" occurred in 2001 or, for the sake of putting triggering events in an historic context, to determine whether "triggering events" occurred in years prior to 2001. Am I correct?

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If I am correct, the absence of this information for prior years then raises a related third issue. That is, the fact that the NFL and the individual NFL teams have always kept this information secret raises the interesting question of whether or not the NFL and the teams (perhaps even including the Chargers) will now for the first time be willing to make all this financial data available for public scrutiny - if and when the Chargers deliver a Renegotiation Notice.

Time will tell. What seems more certain is that, given the scope of the financial information that must be provided by the Chargers and the NFL, [etc. to](#) substantiate a Triggering Event, I would guess that the interest in reviewing this information will manifest itself generally among people and organizations following these issues throughout the nation. We might well expect, therefore, considerable help from third parties in our efforts to review and confirm the data provided.

While the fact that this financial information has never been made available to the public makes it impossible to perform a definitive practice run to evaluate, for example, the 2001 calendar year, perhaps the Task Force might prepare a pro forma accounting to test the calculations. Would such a process be possible? Would it be prohibitively expensive, given the ambiguous results? I don't know. What are your thoughts?

I would suggest, however, that at the very least the Task Force and the City should attempt at this time to carefully design a spreadsheet template into which we can plug the financial data that the City will receive in the event the Chargers give the City notice of a Triggering Event.

This spreadsheet template should be designed, perhaps in Excel, to permit both the City and interested members of the public to promptly review the financial information provided as support for a Renegotiating Notice. The template would allow all parties to immediately flag any missing, ambiguous or questionable data.

I have not attempted to create a model template on my own since I am not sufficiently familiar with the nature of the financial information called out in Section 31.

Nevertheless, in this memorandum I have attempted to break down into their respective constituent parts the various formulas set out in Section 31.

To start with, the definition of a Triggering Event appears fairly straightforward - the devil being, as usual, in the details.

A Triggering Event occurs if during any relevant calendar year the sum of three defined financial factors exceeds the Team Salary Cap. What results is a requirement for four separate calculations:

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1. Calculation of the "Team Salary Cap" as that term is defined in the Agreement;
2. Calculation of the actual "Team Salary" for the Chargers for the year of the Triggering Event as the Team Salary is defined in Article. XXIV, Section 6 of the 1993 CBA, except that the Team Salary is to be calculated on a cash, rather than accrual, basis, and shall include the following cash payments:
 - a. Calculation of the total actual benefit payments provided by the Chargers to its players for the year of the Triggering Event; and
 - b. Calculation of total actual benefit payments provided by the NFL to the Chargers' players for the year of the Triggering Event.

To undertake the first of these calculations, one must initially examine the definition in the Agreement of the "Team Salary Cap." This term is defined to "mean for any year, on a cash basis, seventy-five percent (75%) of *Defined Gross Revenues* for such year, divided by the number of teams playing in the NFL during such year."

This definition of Team Salary Cap has two key elements. First, the numbers must be "on a cash basis."

Second, the term Team Salary Cap contains a second defined term, namely, "Defined Gross Revenues."

It is the definition of this second term, that is, the definition of Defined Gross Revenues that leads us to a very interesting result; for, the definition of this term necessitates receipt and review of financial data, not just from the Chargers, but also from three additional sources. These three additional sources have been mentioned previously in this memorandum and include:

1. The NFL;
2. **All** NFL teams; and
3. **All** designees of the NFL and the NFL Teams.

The essential point is that to undertake the Section 31 calculations to confirm whether or not a Triggering Event has occurred, it is not *sufficient* to merely review financial data relating to the Chargers. Instead, financial data must also be obtained from the NFL and all the NFL teams.

Just what is the nature of this important data? The answer to this question is found in Section 31 which specifies that this particular financial data comprises the *aggregate*

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annual revenues for the "League Year" as that term is defined in Article I, Section 1 of the 1993 CBA; and these revenues specifically include the following:

1. Regular season, pre-season, and post-season gate receipts of the NFL, all NFL teams, and designees, including:
 - a. Net of admission taxes and surcharges paid to a stadium or municipal authorities which are deducted for purposes of calculating gate receipts subject to revenue sharing;
 - b. including ticket revenue from "luxury boxes," and
 - c. suites and premium seating subject to gate receipt sharing among NFL Teams.
2. Proceeds of the NFL, all NFL teams, and designees from the sale, license, or other conveyance of the right to broadcast or exhibit NFL pre-season, regular season, and play-off games on network and national cable television (which by way of example only, would currently include all revenues generated from NFL television contracts with FOX, NBC, ABC, TNT and ESPN).

[Section 31 of the Agreement provides for one exclusion, namely, that Defined Gross Revenues does not include any proceeds from the sale, license, or conveyance of the right to broadcast or exhibit NFL pre-season, regular season, and play-off games to and on any other source, including, without limitation, local television, pay television, satellite encryption, international broadcasts, radio, or any other means of distribution.]

Once this information from all of these sources has been received, the information must, of course, be carefully reviewed to determine whether it is both complete and accurate. And, in that regard, it must, of course, be provided in a manner that can both be audited and be made available to the public, e.g., in electronic format.

Given the amount of data involved, the task of reviewing this information seems enormous. So, in addition to designing a template, the Task Force and the City needs to identify and establish both a process for review of the financial information as well as standards applicable to that review.

For example, aside from the Chargers, will the NFL and all the NFL teams that provide this financial information include with it a certification by independent auditors? Will the financial data all be presented in a uniform format? Will the data be provided, as mentioned above, in electronic format in order that it can be quickly and conveniently plugged into a computer spreadsheet template?

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The various questions that need to be asked and answered are best raised initially by the accountants who would assist the Task Force and the City in reviewing this financial data. So, I will not attempt to discuss these matters in greater detail at this time.

What I need at this point are responses from you in the near future to the questions I have raised since a definitive discussion of them should, in my opinion, be contained in the report of the Contracts Committee to the Task Force - a report, as you know, that the Contracts Committee would like to present to the Task Force prior to the end of November.

Sincerely,

J. Bruce Henderson

Attachment: Section 31 of the Agreement

cc: Contracts Committee
David Watson Councilman
Jim Madaffer Councilwoman
Donna Frye

1995 AGREEMENT FOR PARTIAL USE AND OCCUPANCY OF SAN DIEGO JACK MURPHY STADIUM ("Agreement") made and entered into as of May 30, 1995 at San Diego, California, by and between the CHARGERS FOOTBALL COMPANY, a California limited partnership (the "Chargers") and THE CITY OF SAN DIEGO, a municipal corporation (the "City"):

[1997] SUPPLEMENT NUMBER ONE TO THE 1995 AGREEMENT FOR PARTIAL USE AND OCCUPANCY OF SAN DIEGO JACK MURPHY STADIUM

31. Renegotiation Rights.

(a) Definitions. For the purposes of this Section 31, the following terms shall have the following meanings:

"Defined Gross Revenues" shall mean the aggregate revenues received or to be received on an accrual basis, for or with respect to any "League Year" (as such term is defined in Article I, Section 1 of the 1993 CBA), during the term of this Agreement by the NFL and all NFL Teams (and their designees), from the following sources only:

- (i) regular season, pre-season, and post-season gate receipts (net of admission taxes, and surcharges paid to a stadium or municipal authorities which are deducted for purposes of calculating gate receipts subject to revenue sharing), including ticket revenue from "luxury boxes," suites and premium seating subject to gate receipt sharing among NFL Teams; and
- (ii) proceeds from the sale, license, or other conveyance of the right to broadcast or exhibit NFL pre-season, regular season, and play-off games on network and national cable television (which by way of example only, would currently include all revenues generated from NFL television contracts with FOX, NBC, ABC, TNT and ESPN).

For the purposes of this Agreement only, Defined Gross Revenues does not include any proceeds from the sale, license, or conveyance of the right to broadcast or exhibit NFL pre-season, regular season, and play-off games to and on any other source, including, without limitation, local television, pay television, satellite encryption, international broadcasts, radio, or any other means of distribution.

"Team Salary Cap" shall mean for any year, on a cash basis, seventy-five percent (75%) of Defined Gross Revenues for such year, divided by the number of teams playing in the NFL during such year.

"Triggering Event" shall occur, if on December 1 of any Triggering Year, the sum of the following items exceeds the Team Salary Cap (as defined herein) for the year in question:

- (i) the actual "Team Salary" (as such term is defined in Article XXIV, Section 6 of the 1993 CBA, except as calculated on a cash basis) of the Chargers for such year, plus
- (ii) the total actual benefit payments provided by the Chargers to its players for such year, plus
- (iii) the total actual benefit payments provided by the NFL to the Chargers' players for such year.

"Triggering Year" shall mean

any one year between January 1, 2000 and December 31, 2002, any one year between January 1, 2003 and December 31, 2006, any one year between January 1, 2007 and December 31, 2010, any one year between January 1, 2011 and December 31, 2014

and any one year between January 1, 2015 and December 31, 2018.

(b) Triggering Events. If a Triggering Event occurs in any Triggering Year, then the Chargers shall have the right to renegotiate the terms of this Agreement as follows:

(i) Renegotiation Notice.

On or before the sixtieth (60th) calendar day following the occurrence of any Triggering Event or, in the event that such Triggering Event occurs in any year prior to 2001, on or before the sixtieth (60th) calendar day following December 1, 2001, the Chargers shall deliver written notice thereof (the "Renegotiation Notice") to the City.

If the Chargers fail to deliver a Renegotiation Notice to the City within such sixty (60) calendar day period, the Chargers shall be deemed to have waived its right to renegotiate the terms of this Agreement for that Triggering Year only and such failure shall not be deemed to waive the Chargers' right to renegotiate the terms of this Agreement should a Triggering Event occur in any subsequent Triggering Year.

(ii) Negotiations.

Upon the delivery of a Renegotiation Notice, the parties hereto shall negotiate in good faith for ninety (90) calendar days to agree upon mutually acceptable terms for an amendment to this Agreement to offset the impact on the Chargers of the Triggering Event; provided, however, that neither party shall be precluded from conducting negotiations with third parties during such ninety (90) day period.

If the parties hereto reach an agreement within such ninety (90) day period, they shall execute and deliver an amendment hereto immediately after reaching such agreement and in any event not later than ten (10) Business Days after the end of such ninety (90) day period.

If the parties do not reach an agreement within such ninety (90) day period, then subparagraph (iii) below shall apply.

(ii) City's Right of First Refusal.

In within the eighteen (18) month period following the end of the ninety (90) calendar day negotiation period provided for in subparagraph 31(b)(ii) above, the Chargers execute a letter of intent providing for the Chargers' use of another stadium with any third party, the Chargers shall offer the City a ninety (90) calendar day period after the execution of such letter of intent within which to execute an amendment hereto which matches the financial and overall economic terms of the proposed third party transaction as set forth in such letter of intent.

If the City does not execute such an amendment within ninety (90) calendar day period, the Chargers may terminate this Agreement at any time within sixty (60) calendar days thereafter (the "Termination Date") by giving to the City written notice of such termination at least ten (10) calendar days prior to the Termination Date and making, as of the Termination Date, the payment of the delivery of Federal Securities described below in this subparagraph 31(b)(iii).

In the event such notice is not given or such payment or delivery is not made, this Agreement shall continue in full force and effect.

In the event the Chargers terminate this Agreement in accordance with this subparagraph 31(b)(iii), it shall pay to the City, on the Termination Date, an amount equal to sixty percent (60%) of the amount in dollars as necessary to pay or redeem all of then outstanding debts incurred to finance construction of the Improvements (including any debts incurred to refund any such debt, but excluding any transaction costs relating to such

refunding debt) on the earliest date or dates after the Termination Date that at least sixty percent (60%) of such debt may be paid or redeemed.

In lieu of such payment, the Chargers may deliver Federal Securities to the City, which are not subject to redemption prior to their majority, the interest on and principal of which when paid will provide money, which as verified by an independent consultant reasonably acceptable to the City, shall be sufficient to pay when due the interest to become due on each sixty percent (60%) of such debt from and including the Termination Date to and including the earliest date or dates on which any sixty percent (60%) of such debt may be paid or redeemed as well as sixty percent (60%) of the principal thereof and any redemption premium thereon, less in either case, the sum of (1) sixty percent (60%) of the amount in any debt reserve fund on the Termination Date which may be used for the payment or redemption of such debt, (2) sixty percent (60%) of any amount paid to the City pursuant to subparagraphs 8(b)(i), 8(b)(ii), 8(b)(iii), 8(b)(iv) and 11(e) (the parties acknowledge the provisions of subparagraph 11(e) apply only to the fifteen percent (15%) increase in consideration paid by Service America to the City pursuant to the 1995 concession agreement with Service America, Inc. a copy of which is on file in the office of the City Clerk as Document No.00-18227-1); and (3) sixty percent (60%) of the unamortized (on a straight line basis over the term of the Improvement debt) reasonable actual costs incurred by the City in connection with the issuance of such debt which were not reimbursed out of the proceeds of such debt.

Notwithstanding the exercise of the Chargers' rights under this Section 31 prior to 2003, the effective date of any termination of this Agreement as a result of a Triggering Event shall not occur prior to February 1, 2004.